

1/29/02

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Paper No. 12  
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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Modular International, Inc.

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Serial No. 75/502,332

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Ansel M. Schwartz for Modular International, Inc.

Cimmerian Coleman, Trademark Examining Attorney, Law Office  
102 (Thomas Shaw, Managing Attorney)

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Before Seeherman, Hanak and Holtzman, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Modular International, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register LINEARS as a trademark for "recessed wall and ceiling electric lighting fixtures."<sup>1</sup> Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act,

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<sup>1</sup> Application Serial No. 75/502.332, filed May 29, 1998, and asserting a bona fide intention to use the mark in commerce.

15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its identified goods.

Applicant and the Examining Attorney have filed appeal briefs. An oral hearing was not requested.

We affirm the refusal of registration.

A mark is merely descriptive, and prohibited from registration by Section 2(e)(1) of the Trademark Act, if it immediately conveys knowledge of the ingredients, qualities or characteristics of the goods with which it is used. **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1009).

In support of the refusal of registration the Examining Attorney, has submitted, inter alia,<sup>2</sup> third-party registrations in which the term "linear" is used in the identifications of goods. See, for example, "electric linear lighting fixtures";<sup>3</sup> "nonornamental electric canister-type lighting fixtures and nonornamental electric linear-type lighting fixtures";<sup>4</sup> "linear incandescent lamp

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<sup>2</sup> With her decision on applicant's request for reconsideration the Examining Attorney submitted an index from an Internet search using the GOOGLE search system. This index consists of phrases, and one can "click on" the relevant excerpt to go the web site in which the phrase appears. However, the Examining Attorney did not provide copies of pages taken from the web site, or even provide the web site (URL) address. Accordingly, because we have no information on the actual location of these materials, we have given the GOOGLE listing no consideration.

<sup>3</sup> Registration No. 1,657,308.

<sup>4</sup> Registration No. 1,728,560.

fixtures;"<sup>5</sup> commercial and residential electric linear display lighting fixtures."<sup>6</sup> The Examining Attorney has also submitted excerpts of patents and articles taken from the LEXIS-NEXIS database. For example:

The invention has particular application in linear indirect lighting fixtures having limited space for mounting a ballast.

Linear fluorescent lighting, which is widely used in offices and other commercial environments, employ ballasts ....

FIG. 1 is a side elevational view of a linear indirect lighting fixture housing....  
Patent No. 5,373,416<sup>7</sup>

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The Celestial Vanity Light is recessed in a five in. linear slot about the vanity....  
"Intermountain Contractor," November 1999

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Above the chalkboard, a continuous linear luminaire is recessed in the soffit for supplemental lighting on the board.  
"Architectural Record," August 1998

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<sup>5</sup> Registration No. 1,255,996.

<sup>6</sup> Registration NO. 2,274,782.

<sup>7</sup> In her appeal brief the Examining Attorney states that this patent was made of record by the applicant. However, a review of the file shows that it was made of record by the Examining Attorney with the March 19, 1999 Office action.

Applicant asserts that these references show that "linear" is an adjective and is used to modify other terms. From this, applicant concludes that "linear" is not descriptive of any good in and of itself. We disagree. These submissions show that "linear" is a recognized term to describe a characteristic of lighting fixtures. The fact that additional terms may also be used in the identification of the lighting fixtures does not detract from the descriptiveness of "linear" for lighting fixtures. Further, to the extent that applicant may be asserting that "linear" is not the name of any goods, we simply note that the refusal is not that applicant's mark is generic. As noted above, a term is merely descriptive if it describes a characteristic, etc. of the goods; it need not name them.

Applicant also argues that its mark is LINEARS, not "linear," and LINEARS has no meaning at all. We acknowledge that LINEARS is not found in the dictionary. However, it is immediately apparent to viewers that LINEARS is the common word "linear" to which an "s" has been added. This additional letter does not change the perception of the descriptive word. In fact, given the predilection of people to shorten terms, they may well see "linears" as an abbreviation of "linear lighting," in much the way people refer to fluorescent lights as "fluorescents."

Applicant also asserts that LINEARS is suggestive, not merely descriptive, because one cannot "figure out what the goods are with which the market [sic] is associated."

Brief, p. 2.<sup>8</sup> However, it is a well-established principle of trademark law that the question of descriptiveness is not decided in a vacuum, as applicant apparently would have it, but in connection with the identified goods. **In re Venture Lending Associates**, 226 USPQ 285 (TTAB 1985); see also, **In re Abcor Development Corporation**, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

When the mark LINEARS is viewed in connection with recessed wall and ceiling electric lighting fixtures, consumers would immediately understand it to refer to a characteristic of the goods, namely, that they are linear lighting fixtures. Accordingly, we find that the mark is merely descriptive.

Decision: The refusal of registration is affirmed.

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<sup>8</sup> Applicant has asserted in both its brief and its request for reconsideration that "there is nothing to indicate the mark here has to do with songs." We are unsure as to why applicant has made this statement, since the issue is whether the mark is merely descriptive of lighting fixtures. In any event, the fact that the mark has nothing to do with songs is irrelevant to the ground for refusal.